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SUPERIOR COURT  
YAVAPAI COUNTY, ARIZONA

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SANDRA K. HARRHAM, CLERK  
BY: 

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

vs.

STEVEN CARROLL DEMOCKER,

Defendant.

CAUSE NO. P1300CR201001325

RESPONSE TO REQUEST FOR  
DEPOSITION OF DR. KEEN

Assigned to Hon. Warren R. Darrow  
Division PTB

ORAL ARGUMENT REQUESTED

The State of Arizona, by and through Sheila Sullivan Polk, Yavapai County Attorney, and her deputy undersigned, hereby responds to Defendant's Request for Deposition of Dr. Phillip Keen. This motion is supported by the attached Memorandum of Points and Authorities which is attached hereto and incorporated herein.

MEMORANDUM OF POINTS AND AUTHORITIES

The request for a deposition in a criminal case can only be granted under limited circumstances. Rule 15.3(a), Arizona Rules of Criminal Procedure, provides in pertinent part that the court may in its discretion order the examination of any person upon oral deposition under the following circumstances:

- (1) A party shows that the person's testimony is material to the case and that there is a substantial likelihood that the person will not be available at the time of trial, or
- (2) A party shows that the person's testimony is material to the case or necessary adequately to prepare a defense or investigate the offense, that the person was not a witness at the preliminary hearing or at the

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1 probable cause phase of the juvenile transfer hearing, and that the  
2 person will not cooperate in granting a personal interview, or  
3 (3) A witness is incarcerated for failure to give satisfactory security that  
4 the witness will appear to testify at a trial or hearing.

5 None of these circumstances are present regarding the requested deposition of Dr. Keen.  
6 Dr. Keen is available to be interviewed. In fact, the State scheduled an interview of Dr. Keen  
7 some months ago but counsel for Defendant failed to calendar the interview and the interview had  
8 to be rescheduled. The State has attempted to reschedule this interview but counsel for Defendant  
9 has failed to participate.

10 Defendant's suggestion that since he will be charged the costs of the interview, the  
11 witness has attached a condition to the interview that makes the situation untenable for defense  
12 counsel is without merit. It has long been the practice in this attorney's experience, that when a  
13 party wishes to interview the other party's expert, the requesting party will pay the costs  
14 associated with the interview. Indeed, the State has had to pay for several interviews of disclosed  
15 defense experts, including Dr. Norah Rudin, Melissa Beddow and Peter Barnett. It will certainly  
16 be the case that if the Court orders the deposition of Dr. Keen, Defendant will bear the entire cost  
17 of such deposition.  
18

19 Since Dr. Keen will cooperate in granting a personal interview, there is no basis to order  
20 the requested deposition.

21 **RESPECTFULLY SUBMITTED** this 11 day of August, 2011.

22 **Sheila Sullivan Polk**  
23 **YAVAPAI COUNTY ATTORNEY**

24 By: Steven A. Young  
25 **Steven A. Young**  
26 **Deputy County Attorney**

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**COPY** of the foregoing **Emailed** this  
11<sup>th</sup> day of August, 2011, to:

Honorable Warren R. Darrow  
Division 6  
Yavapai County Superior Court  
Via email to Diane Troxell: [DTroxell@courts.az.gov](mailto:DTroxell@courts.az.gov)

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By: 